

Crime Ordinance to impose a fine in lieu of imprisonment; it decided that the accused could be bound over under section 294 of the Criminal Procedure Code.

It seems to me that, in the present case, the trial Judge's view that section 67(1) of the Road Traffic Act prescribed a mandatory sentence of up to five years' imprisonment and that the section did not provide for a fine as punishment is correct.

In the circumstances of this case, the sentence imposed by the trial Judge is not manifestly excessive.

The appeal is dismissed.

Appeal dismissed.

Solicitors: Jeanny Ng.

**MASILAMAN VELLASAMY v.
ATTORNEY-GENERAL & ANOR.**

[A.C.J. (Chan Sek Keong J.C.) July 29, 1987]

[Singapore — Suit No. 6054 of 1986]

Limitation — Appeal against decision striking out writ of summons — Whether estate claim time-barred — Limitation Act (Cap. 163, 1985 Ed.), s. 6(4) — Civil Law Act (Cap. 43, 1985 Ed.), ss. 7(1) & 11(5).

This was an appeal by the plaintiff against the decision of the Assistant Registrar striking out, on the application of the first defendant, the writ of summons which was filed on December 19, 1986, on the ground that the action as indorsed on the Indorsement of Claim showed that it had been time-barred.

The plaintiff in the Indorsement claimed as administrator of the estate of Rajendran, the deceased, and on behalf of one Amirthammal under section 8 of the Civil Law Act (Cap. 30) against the second defendant as servant of the first defendant for being negligent in the fatal treatment of the deceased on or about November 7, 1983 at the Alexandra Hospital.

The plaintiff submitted that his claim was an estate claim subject to the normal limitation period of six years under section 6(1)(a) of the Limitation Act read with section 7(1) of the Civil Law Act and not, unlike a dependency claim, subject to a limitation period of three years by virtue of section 11(5) of the Civil Law Act.

Held, dismissing the appeal: (1) the estate claim of the plaintiff in the present case was in effect a claim for dama-

ges for personal injuries which, but for section 7(1) of the Civil Law Act, would not have survived at common law. Section 7(1) merely preserved the cause of action posthumously and no more. Unlike section 11(5) of the Civil Law Act in relation to dependency claims, it did not extend or purport to extend, upon the death of the injured person, the limitation period of three years prescribed by section 6(4) of the Limitation Act;

(2) section 6(4) of the Limitation Act applies to all actions for damages for negligence or breach of duty where the damages claimed include damages in respect of personal injuries;

(3) the present claim was a claim for damages for negligence and was therefore time-barred at the commencement of these proceedings.

Cases referred to:

- (1) *Chan Chung Hoong v. Cheow Vooi Peng* [1955] M.L.J. 135.
- (2) *James Patrick & Co. Proprietary Ltd. v. Dacie Ethel Sharpe* [1955] A.C.1.
- (3) *Lloyds Bank Ltd. v. Eagle Star Insurance Co. Ltd.* [1951] T.L.R. 803.
- (4) *Baker v. Bolton* (1808) 1 Camp. 493; 170 E.R. 1033.
- (5) *Rose v. Ford* [1937] A.C. 826, 838.

APPEAL FROM REGISTRAR'S DECISION.

Yogendran for the appellant.

Jeffrey Chan (Deputy Senior State Counsel) for the respondents.

Cur. Adv. Vult.

F **Chan Sek Keong J.C.:** This is an appeal by the plaintiff against the decision of the Assistant Registrar striking out, on the application of the 1st defendant, the Writ of Summons which was filed on December 19, 1986 on the ground that the action as indorsed on the Indorsement of Claim showed that it had been time-barred.

The Indorsement of Claim reads as follows:

"The Plaintiff as the Administrator of the estate of Rajendran s/o Vellasamy, deceased, claims damages on behalf of the said estate and on behalf of Amirthammal w/o Vellasamy under section 8 of the Civil Law Act (Cap. 30) arising out of the negligence of the 2nd defendant as servant or agent of the 1st defendant, in the fatal treatment of the deceased on or about November 7, 1983 at Alexandra Hospital, Singapore."

I Counsel for the plaintiff submitted that the plaintiff's claim is an estate claim subject to the normal limitation period of six years under section 6(1)(a) of the Limitation Act read with section 7(1) of the Civil Law Act and not, unlike a dependency claim, subject to a limitation period of three years by virtue of section 11(5) of the Civil

Law Act. Counsel referred to *Chan Chung Hoong v. Cheow Vooi Peng*⁽¹⁾ where Thomson J. held that upon the construction of sections 3 and 4(v) of the Executors and Fatal Accidents Enactment (Cap. 19) read with section 4 of the Civil Law Enactment 1937, an estate claim was subject to a six-year limitation period although the dependency claim was barred on the expiry of one year after the death of the deceased person.

Counsel for the 1st defendant contended that the estate claim is barred by virtue of section 6(4) of the Limitation Act, which reads as follows:

"An action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, shall not be brought after the expiration of 3 years from the date on which the cause of action accrued."

Section 6(4) has the effect of cutting down the limitation period for actions arising out of negligence, nuisance or breach of duty to three years from the general limitation period of six years for torts generally.

Counsel for the plaintiff submitted that the said section 6(4) has no application because it applies only to claims for damages for personal injuries and not for death and that death, in law, is not a personal injury. Counsel for the 1st defendant, however, contended that the expression "personal injuries" could or should be construed to include death. He referred to two decisions to support his contention *viz.* *James Patrick & Co. Proprietary Ltd. v. Dacie Ethel Sharp*⁽²⁾ (a decision on the meaning of "injury by accident arising out of or in the course of employment" under the Workmen's Compensation legislation) and *Lloyds Bank Ltd. v. Eagle Star Insurance Co. Ltd.*⁽³⁾ (a decision on the meaning of "personal injuries" in an insurance policy).

In my view, the correct approach to the resolution of this issue is not through statutory construction but by way of legal history. The common law in England followed two rules. The first rule, known as the rule in *Baker v. Bolton*⁽⁴⁾, was that "in a civil court the death of a human being cannot be complained as an injury." Thus, a husband could not recover damages for the death caused to his wife. The second rule was expressed

A in the maxim "*actio personalis moritur cum persona*" which had the effect that all actions in tort became extinguished with the death of the party, whether the tortfeasor or the injured party.

B The severity of these rules was alleviated in England by legislation, the first by the Fatal Accidents Act 1846 which has been enacted in Singapore and is now found in section 11(1) of the Civil Law Act. This statutory provision created a new cause of action in favour of the dependants of the deceased for loss of support which was not the same as the deceased would have had if he had been injured and not killed. Death essentially was and still is, under this provision, the cause of action in a dependency claim: see *Charlesworth & Percy* on Negligence 7th ed. Chapter 15.

D In respect of the second rule, the Law Reform (Miscellaneous Provisions) Act 1934 provided that all causes of action, whether against or vested in a person at his death, should survive either against or for the benefit of his estate. This Act did not create a new cause of action but merely preserved a prior existing cause of action in favour of or against the estate of the deceased. Section 1 of this Act has been enacted as part of the law of Singapore and is now found in section 6(1) of the Civil Law Act. The object of this section "is to put a person, who has by his negligence caused damages to some one who has subsequently died, in the same position as regards liability (subject to certain qualifications which do not apply to the present case) as he would have been in, if the injured person had sued and recovered judgment while still alive." *Rose v. Ford*,⁽⁵⁾ per Lord Russell.

G The estate claim of the plaintiff in the present case is in effect a claim for damages for personal injuries which, but for section 7(1) of the Civil Law Act, would not have survived at common law. Section 7(1) merely preserved the cause of action posthumously and no more. Unlike section 11(5) of the Civil Law Act in relation to dependency claims, it did not extend or purport to extend, upon the death of the injured person, the limitation period of three years prescribed by section 6(4) of the Limitation Act.

I I may also add that, as a matter of construction, section 6(4) of the Limitation Act applies to all actions for damages for negligence or breach of duty where the damages claimed *include* damages in respect of personal injuries (emphasis added). The present claim is a claim for damages for negligence.

Accordingly, the plaintiff's claim was time-barred at the commencement of these proceedings. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Yogen & Partners.*

MEDIVAC INTERNATIONAL MANAGEMENT PTE. LTD. v. JOHN WALTER MOORE

[O.C.J. (Chan Sek Keong J.C.) August 11, 1987]

[Singapore — Suit No. 578 of 1987]

Civil Procedure — Injunction to restrain former employee from using confidential information — Application for injunction disallowed on balance of convenience.

Labour Law — Information employee bound to acquire in course of employment — Whether employer entitled to prevent former employee from making use of — Whether trade secret — Injunction against former employee disallowed on balance of convenience.

This was a Motion by the plaintiff to continue an *ex parte* injunction to restrain the defendant, until after judgment, whether by himself or his servants or agents from (a) making use of confidential information, knowledge, expertise and specialist trade secrets which he had opportunity to gather during the course of his employment with the plaintiff for the purpose of competing directly or indirectly with the plaintiff's business and (b) communicating or contracting any of the plaintiff's existing or potential clients in Singapore or any other country with all of whom he had previous dealings.

The plaintiff in this case carried on the business of providing air ambulance services under a Franchise Agreement dated November 1, 1985 made between SOS and the plaintiff. The plaintiff was required for the entire duration of the said franchise to use the trade name of International SOS Assistance subject to the terms of the said franchise. SOS is an associated company of International SOS Assistance Inc, an American medial services company.

The defendant was employed by the plaintiff on July 1, 1986 for a period of five years as its general manager and regional marketing director for Mediplan International PLC. The terms of employment allowed either party to terminate it upon giving to the other 3 months' notice in writing.

On February 5, 1987, the defendant resigned from the plaintiff's employment without giving 3 months' notice required by the terms of his employment and shortly after agreed to work for SOS as managing director of a new company to be incorporated and called International SOS (Far East) Pte. Ltd. It is not disputed that the new company's business would be in direct competition with that of the plaintiff.

A The plaintiff alleged, *inter alia*, that (a) the defendant had, in breach of duties to market the insurance policies, failed to secure any sales of the said policies; (b) the defendant had disclosed confidential information about the plaintiff's business to Minet causing Minet to terminate the Minet Agreement; (c) similarly, the defendant had disclosed confidential information about the plaintiff's business to SOS, causing SOS to terminate the SOS Agreement; (d) by reason of the said breaches, the defendant had caused loss and irreparable damage to the plaintiff, (e) if the defendant continued to disclose the plaintiff's confidential information and business secrets, irreparable damage would be inflicted on the plaintiff. The plaintiff submitted that at the time when the defendant resigned, the plaintiff was at the initial stage of developing its medical evaluation service and because of this, the court, if it was not prepared to continue the injunction in terms of the proposed order, ought to continue it for a reasonable period so as to ensure that the defendant would not have a headstart on the plaintiff as a result of his breaches of duty.

D Held, dismissing the application: (1) what the confidential information was that was alleged to have been disclosed has not been identified by the plaintiff in the Statement of Claim or affidavits. The court was therefore not in any position to determine whether there was, *prima facie*, a causal relationship between the alleged disclosures and the termination;

E (2) both SOS and Minet have denied that the defendant had anything to do with the termination of the SOS Agreement and the Minet Agreement;

F (3) information relating to items in the proposed modified injunction were not confidential information in the nature of trade secrets. It was information which any employee in the defendant's position was bound to acquire in the course of his employment. As the plaintiff was not entitled to prevent the defendant from making use of his knowledge of the sources of these services, such information could not be classed as a trade secret;

G (4) the court was not satisfied that the plaintiff had any real prospect of succeeding in his claim for a permanent injunction. On the balance of convenience, the defendant should be allowed to exercise his right to work for or with the new company on the grounds: (a) restraining the defendant from using or disclosing the said information would not effectively prevent SOS from competing with the plaintiff which was the purpose of the *ex parte* injunction, but would unjustifiably prevent the defendant from competing with the plaintiff in the absence of any restraint of trade provision in his contract of employment with the plaintiff; (b) the plaintiff has had a four-month headstart over the defendant, as a consequence of its having obtained an *ex parte* injunction.

Cases referred to:

- (1) *Robb v. Green* [1895] 2 Q.B. 315.
- I (2) *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504.
- (3) *Fisher-Karpark Industries Ltd. v. Nichols* [1982] F.S.R. 351.
- (4) *Faccenda Chicken Ltd. v. Fowler* [1986] 1 All E.R. 617.
- (5) *E. Worsley & Co. Ltd. v. Cooper* [1939] 1 All E.R. 290.